

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
W.H. SHIPMAN, LIMITED )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for Approximately )  
175.74 Acres At Keaau, Puna, )  
Hawaii, Tax Map Key: (3) 1-6-03: )  
Portion of 90 )

DOCKET NO. A84-570

W.H. SHIPMAN, LIMITED

This is to certify that this is a true and correct  
copy of the Decision and Order on file in the office  
of the State Land Use Commission, Honolulu Hawaii.

JUL 02 1993

Date

by

*Robert Lead*  
Executive Officer

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

JUL 2 10 22 AM '93  
LAND USE COMMISSION  
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A84-570
	)	
W.H. SHIPMAN, LIMITED	)	W.H. SHIPMAN, LIMITED
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District for Approximately	)	
175.74 Acres At Keaau, Puna,	)	
Hawaii, Tax Map Key: (3) 1-6-03:	)	
Portion of 90	)	
_____	)	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

On December 14, 1992, W. H. SHIPMAN, LIMITED (hereinafter "Petitioner"), filed its Motion to Confirm Substantial Completion of Development of Increment I and to Approve Urbanization of Increment II pursuant to Decisions and Orders issued by the Land Use Commission ("Commission") in this docket on February 19, 1985 and January 9, 1990, and in accordance with Sections 15-15-70, 15-15-78, and 15-15-94, Hawaii Administrative Rules ("H.A.R.").

This Commission having heard or examined all the testimony, evidence, and argument of the parties presented during the hearing, and the Stipulation on Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed on June 17, 1993, the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the records

and files in this docket, hereby makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

##### Procedural Matters

1. On December 14, 1992, the Petitioner filed the Motion to Confirm Substantial Completion of Development of Increment I and to Approve Urbanization of Increment II Pursuant to Decisions and Orders Issued February 19, 1985 and January 9, 1990 ("Motion").

2. On April 12, 1993, a prehearing conference was held at Conference Room 238, Old Federal Building, 335 Merchant Street, Honolulu, Hawaii with all parties in attendance.

3. On April 29, 1993, the Commission conducted a hearing on the Petitioner's Motion, pursuant to notices published on March 19, 1993 in the Honolulu Advertiser and the Hawaii Tribune-Herald, newspapers of general circulation.

4. There were no requests for intervention nor any public witnesses testifying on Petitioner's motion.

##### Background

5. On June 18, 1984, Petitioner filed a Petition in this docket to reclassify approximately 487.74 acres at Keaau, Puna, Hawaii, TMK: 1-6-03: 78 and Portion of 7, now renumbered and identified as TMK: 1-6-03:78, Portion of 90, 92, 94 and 1-6-146: 1-19, 21-55 from the Agricultural District to the Urban District. Petitioner proposed to develop an industrial park in two increments. The first increment would consist of

approximately 312 acres and the second increment would consist of approximately 175.74 acres. Petitioner proposed to develop the first increment in five years and the second increment within a second five-year period.

6. By Findings of Fact, Conclusions of Law, Decision and Order dated February 19, 1985, the Commission approved the reclassification of approximately 312 acres from the Agricultural District to the Urban District at Keaau, Puna, Hawaii (Increment I). Redistricting of Increment II, consisting of approximately 175.74 acres, and identified as TMK: 1-6-03: portion of 90 (hereinafter "Property"), from the Agricultural to the Urban District was subject to receipt of an application by Petitioner and a prima facie showing that there has been substantial completion of the off-site and on-site improvements within Increment I in accordance with the Petitioner's development plan.

7. Effective August 19, 1986, the Hawaii County Council approved Change of Zone Ordinance No. 86-85, which rezoned the entire 487.74 acre property from an Agricultural (A-20a) to a General Industrial (MG-20) zoned district. Pursuant to Condition B of Ordinance No. 86-85, the zoning for the Property shall not become effective until the Property is certified by the Commission to be reclassified within the Urban District. Pursuant to Condition C of Ordinance No. 86-85, the approximately 312 acres designated as Increment I by the Commission was zoned into two increments. The first zoning

increment consisted of approximately 158 contiguous acres (County of Hawaii Increment 1). The effective date of zoning for the second zoning increment consisting of approximately 127 acres (County of Hawaii Increment 2 ) was to be after development had occurred in County of Hawaii Increment 1.

8. On September 26, 1989, Petitioner filed a Motion to Extend Time Within Which to File a Petition for Increment II of the W. H. Shipman Industrial Park. The Order Approving in Part Motion to Extend Time to Complete Substantial Development of Increment I and to Apply for Incremental Redistricting of Increment II was issued by the Commission on January 9, 1990. The order granted Petitioner until February 19, 1993, to achieve "substantial completion of the on-site and off-site improvements within Increment I" and to apply for redistricting of the Property. All other provisions of the Decision and Order originally issued on February 19, 1985 remained in effect.

9. On December 28, 1990, the Additional Amendment to Covenants, Conditions and Restrictions and Owner's Association Contract Originally Recorded as Land Court Document No. 1568649 and Noted on Transfer Certificate of Title No. 309914 on August 1, 1988 was recorded at the Land Court of the State of Hawaii as Document No. 1991651. The additional amendment adopted language recommended by the Department of Health relating to measures to mitigate against potential groundwater contamination.

Petitioner's Substantial Completion of Increment I

10. In December, 1986, Petitioner submitted a subdivision application with the Planning Department to create a total of 19 industrial lots involving approximately 28 acres of land (Phase 1-A, County of Hawaii Increment 1). Final subdivision approval was granted on December 30, 1987. All 19 lots have been sold, and 11 structures have been built and/or are under construction.

11. In December, 1988, Petitioner submitted a subdivision application for Phase 1-B of County of Hawaii Increment 1 to allow the creation of 36 industrial lots on approximately 77 acres of land. Final subdivision approval was granted on December 5, 1989. Thirty-three of the 36 lots have been sold, and ten structures have been built and/or are under construction.

12. In July, 1990, Petitioner submitted a subdivision application for Phase 1-C of County of Hawaii Increment 1 to allow the creation of 32 industrial lots on approximately 48 acres. Final subdivision approval was granted on December 11, 1991. Six lots have been sold and/or are in escrow and one structure has been built or is under construction. Petitioner does not foresee any difficulty in marketing the remaining lots.

13. In December, 1991, Petitioner submitted a subdivision application for Phase 1-D of County of Hawaii Increment 1 to allow the creation of 21 industrial lots on approximately 30 acres. Tentative subdivision approval was

granted on January 28, 1992. Petitioner received an extension until January 28, 1994, in which to submit the final subdivision plat map.

14. On July 22, 1992, the Hawaii County Council adopted Ordinance No. 92-87, amending Conditions C and N, and adding Conditions O, P, and Q to Ordinance No. 86-85. Condition C was amended to reduce the development performance requirement from 25% to 15%.

15. On December 2, 1992, the Hawaii County Council accepted Petitioner's Affordable Housing Need Study. Acceptance of said study satisfied Condition M of Rezoning Ordinance Nos. 86-85 and 92-87, thus allowing Petitioner to proceed with its rezoning of County of Hawaii Increment 2 of the industrial park.

16. As part of the subdivision approval process and in compliance with conditions of the rezoning ordinance, as amended, Petitioner has substantially completed the required off-site and on-site improvements for the project. The water supply and storage system for the entire industrial park has been completed. A 5,000 lineal foot 16-inch water main has been installed to transport water from Keaau Village to the industrial park. The State highway improvements for access to Increment I of the project, which consist of a channelized intersection and acceleration and deceleration lanes, are completed. All on-site improvements, including roadways, have been completed for Phases 1-A, 1-B and 1-C of County of Hawaii

Increment 1. Construction has started on Phase 1-D, and full development is expected to be completed by the 2nd quarter of 1993.

Position of the State

17. The Office of State Planning in its memorandum in support of Petitioner's motion noted that the Property is situated over a major groundwater body with a recharge rate that is estimated to be approximately one billion gallons per day, and recommended that the reclassification be approved with three conditions relating to the establishment of systems and methods of treatment and mitigation of hazardous waste, disposal and spill issues.

Position of the County

18. The County of Hawaii concluded in its memorandum in support of Petitioner's motion that Petitioner has substantially completed the on-site and off-site improvements within Increment I and supports Petitioner's request for approval of reclassification of the Property from the Agricultural District into the Urban District.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact not adopted by the Commission herein, or rejected by clear contrary finding of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a



conclusion of law should be deemed or construed as a finding of fact.

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes ("HRS"), and the Hawaii Land Use Commission Rules under Chapter 15-15, H.A.R., and subject to the conditions of the Decision and Order provided herein, the Commission finds upon a clear preponderance of the evidence that there has been substantial completion of the on-site and off-site improvements within Increment I in accordance with the Petitioner's development plan, that urbanization of approximately 175.74 acres comprising the Property herein is reasonable and proper, that Petitioner's development plan conforms to the standards for reclassification from the Agricultural District to the Urban District, is reasonable and not violative of Section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in Chapter 226, HRS, the Land Use Commission decision-making criteria pursuant to Section 205-17, HRS, and the Coastal Zone Management program, objectives and policies pursuant to Section 205A-2, HRS.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the lands within Increment II of the Petitioner's development plan, comprising approximately 175.74 acres of land at Keaau, Puna, Hawaii, Tax Map Key (3) 1-6-03: Portion of 90, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is

hereby reclassified from the Agricultural District to the Urban District and the State Land Use District Boundaries are hereby amended accordingly, subject to the following conditions:

1. Petitioner shall coordinate with the County of Hawaii and the State Department of Health regarding the establishment of appropriate systems to contain spills and prevent materials associated with industrial uses such as petroleum products, chemical or other pollutants, from adversely affecting the groundwater.

2. Petitioner shall comply with the requirements of the State Department of Health and the County of Hawaii Department of Public Works with respect to the installation of the project's sewage system.

3. Storage and/or disposal of hazardous wastes shall be approved by the Department of Health prior to their establishment on the Property.

4. Petitioner shall complete the proposed project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former land use classification, or change to a more appropriate classification.

5. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject property and the Petitioner's progress in complying with the conditions imposed.

6. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

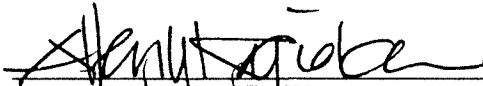
7. The conditions imposed by the Land Use Commission shall be recorded with the Bureau of Conveyances and Land Court of the State of Hawaii, if applicable, pursuant to Section 15-15-92, H.A.R.


8. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances or Land Court of the State of Hawaii, whichever is appropriate, a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

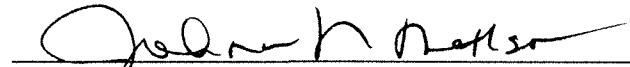
DOCKET NO. A84-570 - W.H. SHIPMAN, LIMITED


Done at Honolulu, Hawaii, this 2nd day of July 1993,  
per motion on June 29, 1993.

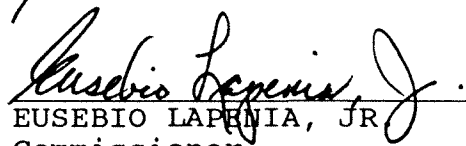
LAND USE COMMISSION  
STATE OF HAWAII


By   
ALLEN Y. KAJIOKA  
Chairman and Commissioner


By   
KAREN S. AHN  
Vice Chairman and Commissioner

By   
JOANN N. MATTSON  
Vice Chairman and Commissioner

By   
ALLEN K. HOE  
Commissioner

By   
EUSEBIO LAPENIA, JR.  
Commissioner

By   
RENTON L. K. NIP  
Commissioner

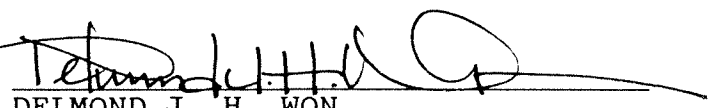
By   
TRUDY K. SENDA  
Commissioner

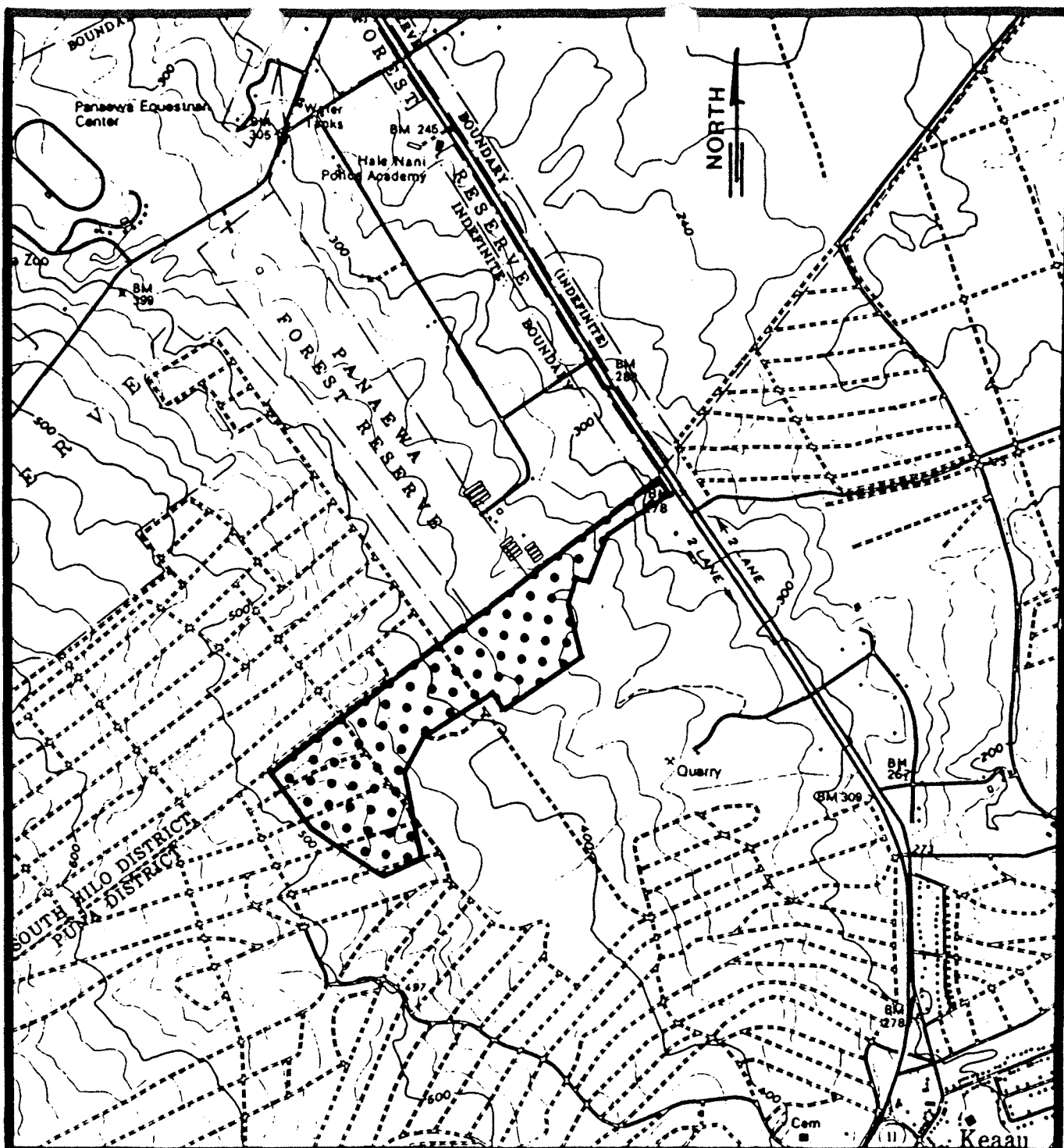
Filed and effective on  
July 2, 1993

Certified by:

  
Executive Officer

By (absent)  
ELTON WADA  
Commissioner

By   
DELMOND J. H. WON  
Commissioner



DOCKET No. A84 - 570 W. H. SHIPMAN, LIMITED

### LOCATION MAP

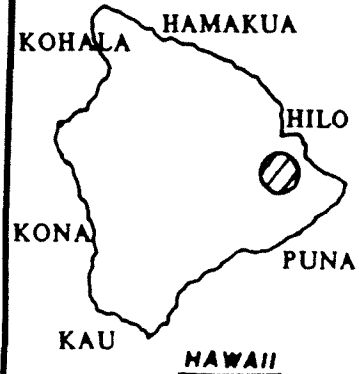
TAX MAP KEY: 1 - 6 - 03: por. 90

KEAAU, PUNA, HAWAII

SCALE: 1" = 2,000 ft. ±



APPROVED AREA (Increment II)



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A84-570
	)	
W.H. SHIPMAN, LIMITED	)	W.H. SHIPMAN, LIMITED
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District for Approximately	)	
175.74 Acres At Keaau, Puna,	)	
Hawaii, Tax Map Key: (3) 1-6-03:	)	
Portion of 90	)	
_____	)	

CERTIFICATE OF SERVICE

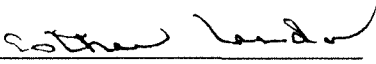
I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director  
Office of State Planning  
P. O. Box 3540  
Honolulu, Hawaii 96811-3540

CERT. VIRGINIA GOLDSTEIN, Planning Director  
Planning Department, County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

CERT. STEVEN S.C. LIM, ESQ., Attorney for Petitioner  
Case & Lynch  
460 Kilauea Avenue  
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 2nd day of July 1993.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer